

Approved as Submitted: August 24, 2005

**CITY OF MORGAN HILL
JOINT SPECIAL AND REGULAR CITY COUNCIL
AND SPECIAL REDEVELOPMENT AGENCY MEETING
MINUTES – AUGUST 3, 2005**

CALL TO ORDER

Mayor Pro Tempore/Vice-chairman Tate called the special meeting to order at 6:00 p.m.

ROLL CALL ATTENDANCE

Present: Council/Agency Members Grzan, Sellers, Tate and Mayor/Chairman Kennedy
Late: Mayor/Chairman Kennedy and Council/Agency Member Carr (both arrived for closed session discussion)

DECLARATION OF POSTING OF AGENDA

Mayor Pro Tempore/Vice-chairman Tate certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

City Council and Redevelopment Agency Action

CLOSED SESSIONS:

Mayor Pro Tempore/Vice-Chairman Tate announced the below listed closed session items:

1.

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Authority: Government Code Sections 54956.9(b) & (c)
Number of Potential Cases: 1

2.

PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Authority: Government Code 54957
Public Employee Performance Evaluation: City Manager
Attendees: City Council, City Manager

OPPORTUNITY FOR PUBLIC COMMENT

Mayor Pro Tempore/Vice-Chairman Tate opened the Closed Session items to public comment. No comments were offered.

ADJOURN TO CLOSED SESSION

Mayor Pro Tempore/Vice-Chairman Tate adjourned the meeting to Closed Session at 6:04 p.m.

RECONVENE

Mayor/Chairman Kennedy reconvened the meeting at 7:05 p.m.

CLOSED SESSION ANNOUNCEMENT

Interim City Attorney/Agency Counsel Siegel announced that no reportable action was taken in closed session.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

At the invitation of Mayor/Chairman Kennedy, George Nale led the Pledge of Allegiance.

RECOGNITIONS

Mayor Kennedy presented Certificates of Recognition to Walt Glines, retiring Editor of the Morgan Hill Times and Carol Holzgrafe, retiring City Hall Reporter of the Morgan Hill Times. He expressed the Council's sincere appreciation for their years of working with the City to bring local issues before the community.

INTRODUCTIONS

Director of Public Works Ashcraft introduced new Public Works employees Charlie Ha, engineer; Ernie Wilson, groundskeeper; Lemo Huizar, maintenance worker I; and Mario Iglesias, utility manager.

RECOGNITION

Mayor Kennedy presented retiring Planning Commissioner Charles Weston with a gift of appreciation for his years of service to the City and community as a member of the Planning Commission.

CITY COUNCIL REPORT

Council Member Grzan thanked Ms. Holzgrafe, Mr. Glines and Mr. Weston for their outstanding service and contributions to the community. He reported on the Financial Policy Committee and the Environmental Utilities Committee. He stated that both of these committees are extremely active, looking for solutions and issues in the community. He said that in the last couple of weeks, the Council has approved a number of items, including policies that enhance the City's waste management, and preserving creeks & streams associated with development. He indicated that many hours are spent by staff and Council members in the review of these issues in order to bring solutions to the Council. He stated that the Financial Policy Committee is at a critical stage and is looking toward solutions to the City's economic issues, deficit, budget and problems. The Committee is in the process of looking for a consultant to assist the City with the conversation that it will have with the community to hear what citizens would like Morgan Hill to be; what issues, solutions, and choices the City has; and inviting the

community to participate in these discussions. He said that the City will be making a decision soon to bring on board a professional to assist the City and initiate a conversation with the community. He thanked Mayor Pro Tempore Tate for taking a leadership role in this process and that it is his hope that the City will have a fruitful outcome.

Mayor Pro Tempore Tate said that the Financial Policy Committee is reviewing proposals from executive search firms for the City Attorney recruitment and that the Committee will be returning to the Council with a recommendation on August 24.

Council Member Carr stated that the Public Safety & Community Services Committee met on Monday morning and talked about how the Council will be addressing issues and looking at work plan items. He said that the Committee will be bringing an item before the Council to talk about the reporting roles from some of the Commissions and Committees and how they report to the Council on August 24.

CITY MANAGER REPORT

City Manager Tewes stated that he did not have a report to present this evening.

CITY ATTORNEY REPORT

Interim City Attorney Siegel indicated that he did not have a report to present.

OTHER REPORTS

PUBLIC COMMENT

Mayor/Chairman Kennedy opened the floor to public comments for items not appearing on this evening's agenda. No comments were offered.

City Council and Redevelopment Agency Action

CONSENT CALENDAR:

Council Member Sellers requested that item 3 be removed from the Consent Calendar.

Action: *On a motion by Council Member Sellers and seconded by Mayor Pro Tempore Tate, the City Council unanimously (5-0) **Approved** Consent Calendar Items 1, 2 and 4-6 as follows:*

1. **APPROVAL OF SETTLEMENT AGREEMENT FOR TENNANT AVENUE WIDENING PROJECT**

Action: **Ratified** Settlement Agreement for the Hernandez Property (APN: 817-04-006) as Identified in the Staff Report.

2. **AMENDMENT TO COST SHARING AGREEMENT WITH SANTA CLARA VALLEY WATER DISTRICT FOR LLAGAS CREEK FLOOD PROTECTION (PL 566) TECHNICAL STUDIES**
*Action: 1) **Approved** Appropriation of \$40,000 from Current Year Unappropriated Drainage Fund (304, Non-AB 1600) Balance for this Project; and 2) **Authorized** the City Manager, Subject to City Attorney Review and Approval, to Execute an Amendment to a Cost Sharing Agreement with the Santa Clara Valley Water District Increasing the City's Share by \$40,000.*
4. **ADOPT ORDINANCE NO. 1732, NEW SERIES**
*Action: **Waived** the Reading, and **Adopted** Ordinance No. 1732, New Series, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN R-2/RPD ZONING AMENDMENT TO ESTABLISH A RESIDENTIAL PLANNED DEVELOPMENT OVERLAY ON A 10.44 ACRE SITE LOCATED ON THE SOUTHWEST CORNER OF EAST DUNNE AVENUE AND SAN BENANCIO WAY. (APNs 817-11-067 & 817-11-072).***
5. **ADOPT ORDINANCE NO. 1733, NEW SERIES**
*Action: **Waived** the Reading, and **Adopted** Ordinance No. 1733, New Series, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING DEVELOPMENT AGREEMENT, DA 04-09 FOR APPLICATION MP-02-06: EAST DUNNE - DEMPSEY & MP-04-12: EAST DUNNE - DELCO (APNs 817-11-067 & 817-11-072).***
6. **ADOPT ORDINANCE NO. 1734, NEW SERIES, AS AMENDED**
*Action: **Waived** the Reading, and **Adopted** Ordinance No. 1734, New Series, As Amended, and **Declared** That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING THE MORGAN HILL MUNICIPAL CODE, CHAPTER 18.50 OFF-STREET PARKING AND PAVING STANDARDS, TO ESTABLISH EXEMPTIONS FOR DOWNTOWN DEVELOPMENT PROJECTS.***
3. **REQUEST TO CO-SPONSOR CENTENNIAL EVENTS AT THE COMMUNITY AND CULTURAL CENTER**

Council Member Sellers noted that the staff report identifies events to take place: Centennial Days event and the Incorporation Reception to be held November 10, 2006. He indicated that the staff report talks about the fact that the City Council has an adopted cost recovery policy and that staff does not recommend the Council waive fees for the use of the Community & Cultural Center. The Council also has a policy regarding the unallocated general fund reserves, the funds being requested to pay for the use of the facility. He said that it is his understanding that it is the Council's policy that the general fund reserves are to be used for one time fees for activities that promote economic development. He stated

that as audible as this activity is, and as supportive all Council members are of the centennial events, he wanted to make sure that the Council was not allowing a significant deviation of the Council's policy merely to proceed with these activities.

City Manager Tewes stated that he did not believe that staff's recommendation deviates from Council policy. He said that the Council has a policy with respect to the General Fund reserves such that it is the Council's goal to have no less than 25% of annual revenues in a reserve status. The Council has indicated that below this amount, the Council would be willing to make investments in projects, such as economic development, that have high rates of return or improvements. He informed the Council that the City is still above the 25% level. Therefore, resources exist and need to be evaluated in the context of any other general fund expenditure.

Council Member Sellers stated that he wanted to make it clear why the Council would be undertaking this action.

Action: *On a motion by Council Member Sellers and seconded by Mayor Pro Tempore Tate, the City Council unanimously (5-0): 1) Agreed to Co-Sponsor Centennial Morgan Hill Committee's Centennial Events at the Community & Cultural Center; and 2) Appropriated \$10,000 from the General Fund Reserves.*

Redevelopment Agency Action

CONSENT CALENDAR:

Council Member Grzan requested that item 7 be removed from the Consent Calendar.

7. CHAMBER OF COMMERCE ECONOMIC DEVELOPMENT MARKETING PLAN FOR FISCAL YEAR 2005-2006

Agency Member Grzan noted that the Chamber of Commerce has come before the City Council on a number of occasions regarding this same issue. He expressed concern regarding the goals that implement business retention and attraction programs. In reviewing the information presented, he stated he does not have a sense of how many businesses are being retained and how many new businesses were attracted by the promotional campaign initiated by the Chamber of Commerce. He inquired whether the City would receive quantifiable return on investment information.

Bob Martin indicated that the Chamber of Commerce worked with staff to develop a set of matrices that have been recognized and accepted by the Council approximately nine months ago. He said that should there be a Council desire to review the matrices, it can be done. He stated that the best matrix the Chamber of Commerce has is the sales tax and sales tax cash receipts. He noted that these are at an all time high. To say directly that the Chamber of Commerce's efforts is a result of this, he realizes would be somewhat dismissive. On the other hand, it was his belief that part of this was in direct response to the Chamber's efforts. If the matrix that the Chamber has put forth is not acceptable to the Council, the Chamber can look at different matrices.

Agency Member Grzan stated that although he would support staff's recommended action, he would be looking for quantifiable return on the investment in the reports to be provided to the Council. He would like to know how many businesses have been retained and recruited in the community.

Mr. Martin said that the Chamber of Commerce's economic development committee assisted with the recruitment of a business that shares the building with the police facility. He informed the Council that every quarter up to this quarter, the Council has been provided a matrix. It was the Chamber's belief that the Council received the year end matrix from the City; the source of some of the Chamber's measurement.

Action: *On a motion by Vice-chairman Tate and seconded by Agency Member Sellers, the City Council unanimously (5-0) **Authorized** the Executive Director to Prepare and Execute an Agreement, in an Amount not to Exceed \$125,000, with the Morgan Hill Chamber of Commerce to Implement their Economic Development Marketing Plan for Fiscal Year 2005-2006; Subject to Review and Approval of Agency Counsel.*

City Council and Redevelopment Agency Action

CONSENT CALENDAR:

Action: *On a motion by Council/Agency Member Sellers and seconded by Mayor Pro Tempore/Vice-chairman Tate, the City Council/Agency Board unanimously (5-0) **Approved** Consent Calendar Item 8 as follows:*

8. **JOINT SPECIAL AND REGULAR CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES OF JULY 20, 2005**
Action: ***Approved** the Minutes as written.*

City Council Action

PUBLIC HEARINGS:

9. **GENERAL PLAN AMENDMENT, GPA-04-07 AND ZONING AMENDMENT, ZA-04-14 FOR SUNSWEET OPPORTUNITY SITE, TO ESTABLISH DENSITY OF 25-40 UNITS PER ACRE AND PLANNED UNIT DEVELOPMENT ZONING AND DESIGN GUIDELINES, TO IMPLEMENT THE DOWNTOWN PLAN – Resolution No. 5937 & Ordinance No. 1735, New Series**

Director of Community Development Molloy Previsich presented the staff report, informing the Council that a resolution to amend the General Plan to establish a density range of 25-40 units per acre for the area identified in the Downtown Plan as the "Sunsweet" opportunity site is before it for consideration. Also, before the Council is an ordinance that would establish a planned unit development (PUD) zoning

for the site that would establish the allowable uses, development standards, and design guidelines that would apply to future development. She informed the Council that the PUD would allow for only 25% ground floor leasable areas along the Third Street frontage to be used for office or personal service without a conditional use permit. This would ensure an active pedestrian friendly relationship. Above the 25% threshold, a conditional use permit would be required. She stated that a supplemental report has been provided to the Council that reviews technical corrections that came about following discussions with the property owners. She indicated that the resolution and ordinance need to be modified to correct the listing of assessors parcel numbers. Also, for clarity in the General Plan amendment text language in the resolution and for the ordinance's residential density standard, private parking areas would be included in the density calculation, but not in the area designed for public parking. She said that within the design guidelines and the parking and circulation guidelines, the property owner would need to design and provide public parking. Since the downtown parking text amendment has been adopted, she stated that commercial parking spaces are no longer required. She stated that staff supports the deletion of the words "...and provided" as public parking will not need to be provided for commercial uses. She indicated that staff has also been informed by the property owner that he intends to request the requirement for minimum ground floor frontage commercial square footage be reduced from the 10,000 square feet recommended by the Planning Commission to an 8,000 square foot minimum. She informed the Council that staff has not seen material to support the request. She noted that the Council received communication from the Downtown Association Board of Directors who indicate their support of the designation of a PUD, and are urging that density occur at 40 dwelling units for acre. They oppose the 25% allowance for ground floor office uses as permitted uses and are requesting an additional requirement that the commercial-retailer, entertainment and restaurant space planned for Third Street be constructed at the same time as residential development.

Council Member Sellers inquired as to the length of the frontage section on Third Street.

Ms. Molloy Previsich responded that the area that is controlled by Mr. Garcia, less the Morgan Hill Times building, is approximately 400 linear feet. She stated that there is no requirement for commercial or guest parking due to a recent parking ordinance amendment, but that two parking spaces would be required per residential unit.

Council Member Sellers noted that the Planning Commission discussed the 25-foot depth as a minimum depth for commercial development along Third Street. He inquired whether this standard was included in the recommendations.

Ms. Molloy Previsich said that Mr. Garcia has stated, in consultation with his architect, that he was estimating that commercial depths along Third Street would range between 25–40 feet. The Planning Commission determined that given there is 400 linear feet of frontage, commercial development would range between 8,000 to 12,000 square feet. The Planning Commission selected the middle number of 10,000 square feet as a minimum requirement based on the range in depth of 25–40 feet. The Planning Commission decided not to include in the ordinance a minimum depth standard. They established the total square footage as a minimum requirement, but thought it would be acceptable to wait architectural and site review to review the floor plans to see if the depth would work with commercial development.

Council Member Sellers said that in the development of the Downtown Plan, it has always been the intent that the Third Street frontage would develop as commercial. In reviewing the Planning Commission's discussion, they did not talk about having the entire frontage, minus access to second floors, driveways, or addressed this issue. He inquired whether it would be possible to have a 40% depth commercial space and have three units of residential next door.

Ms. Molloy Previsich stated that the property owner did not believe that a 100% requirement was workable/feasible, and did not want a conditional use permit requirement to be included. The Planning Commission considered Mr. Garcia's request and a number of different approaches to this issue. She said that the only residential aspect would be a stairway going up to the residential units along the frontage. She clarified that no residential units would be allowed on the Third Street frontage.

Mayor Kennedy indicated that the Downtown Association opposes the 25% exemption for ground floor office use in the 10,000 square foot minimum on the Third Street frontage. He noted that it is being proposed that there be a 10,000 square foot requirement for retail on the first floor.

Ms. Molloy Previsich clarified that what is being proposed is 10,000 square feet of non residential uses. There is a question of how far back you go with commercial space. She said that it was necessary to clarify how much commercial space is to be included in the project. She indicated that Mr. Garcia provided input that he expects that the depths of the space along the frontage would range from 25-40 feet. It will not be commercial 100 feet back from the street frontage. The Planning Commission discussed this issue and felt that a 25–40 foot setback is a reasonable range and that this could be explored further at the site and architectural review process. She informed the Council that the Planning Commission felt it was important to establish a minimum of 10,000 square feet of commercial development in order to achieve a real amount of commercial square footage with this project.

Mayor Kennedy inquired whether the project meets the Downtown Plan with respect to the commercial-retail frontage along Third Street.

Ms. Molloy Previsich said that the Downtown Plan states that retail is strongly encouraged to the point that any office use would require a conditional use permit. She noted that the conditional use permit process would require time and money and could be perceived as a disincentive to moving a project forward. The Planning Commission discussed all these factors and decided that a good compromise would be to require that development along the Third Street frontage to be non residential and established a minimum of 10,000 square feet along this frontage; only allowing 25% of this square footage as office space, or personal service. She indicated that the Planning Commission felt this would strike the right balance and be consistent with the Downtown Plan.

Council Member Carr expressed concern that as the project is developed that it not be developed with the idea that 25% will be office use. He recommended that development along the Third Street frontage be designed as commercial retail space. If the owner is having difficulty leasing space out and is forced to look at other uses, this is when the 25% would be considered.

Ms. Molly Previsich stated that the design guidelines address the requirement of retail store front space. Further, that development is to be inviting, pedestrian friendly and accommodate good retail uses.

Council Member Grzan referred to the building design and inquired whether development would be consistent and follow the theme of the downtown.

Ms. Molloy Previsich said that the design guidelines are intended to guide an architect to design a project consistent with what the City is looking for in the downtown. This will be determined when a developer submits a project for site and architectural review. She stated that part of the PUD guidelines point the developer in the right direction of what the City is looking for. She felt that there is sufficient information in the design guidelines to draw upon a design that meets the downtown plan requirements and the current downtown. She indicated that the PUD guidelines could address the desire to change the parking requirements.

Mayor Kennedy opened the public hearing.

Barton Hechtman, representing Glenrock Builders, owner of the majority of the Sunsweet property, indicated that this issue was before the Council six months ago. At that time, he felt that the draft PUD ordinance was rigidly cast such that he and the owner of the Sunsweet site had significant concerns. The Council continued the item to allow them to work out the issues with staff. He indicated that the last six months have been productive; working cooperatively with staff and the Planning Commission. He felt that a project has been shaped that is economically buildable. Further, with the right cooperation between the Redevelopment Agency and Glenrock Builders, he can see this action take place.

Mr. Hechtman said that there is one issue that still concerns Glenrock Builders. He addressed the 10,000 square foot minimum ground floor frontage requirement. He stated that he is not opposed to trying to achieve the 10,000 square foot minimum. However, the property owner is confident that he can meet the 8,000 square feet and will try to achieve 10,000 square feet. He requested that the Council amend the middle of page 2, Minimum Ground Floor Frontage to delete “a minimum of 10,000 square feet” and replace this phrase with “development is encouraged to include up to 10,000 square feet, but in no event, less than 8,000 square feet...” He addressed the square footage constraints that may prevent committing to the 10,000 square feet. He noted that there is 400 feet of frontage running down Fourth and Third Streets with 200 feet of width around Depot Street. He said that the first 70 feet has to be set aside for public parking, 26 foot drive lanes, and landscaping. This leaves you with 330 feet of frontage. Out of these 330 feet, you will have walkways/stairway entrances up to the second and third floor locations. He noted that Measure C provides points for a mid point block pass through. He felt that an open area may be required in order to obtain Measure C points and be competitive with other downtown projects. He said that these requirements chip away at the 330 foot frontage available. In addition, you have to look at the depth of the building along Third Street. He stated that in order to get 50 residential units on 2+ acres, the likely design would be a u-shaped building with another central building and a driveway. The garages would be tucked under the building, taking up part of the square footage. Therefore, the retail spaces would be 20 feet narrower and the project would be squeezed. As the project has not been designed, he was not confident that development can achieve 10,000 square feet. He stated that he can

commit to providing 8,000 square feet of commercial/retail space. However, he requested leeway and that the developer be encouraged to provide 10,000 square feet with a minimum of 8,000 square feet.

Dan Craig, Downtown Association, felt that staff covered the Association's points. He said that when the Downtown Association reviewed the proposal and developed its position points, they did so based on the Downtown Plan. He stated that the Association is in agreement with the square footage limits. He indicated that the Association believes the Council needs to defer to the Downtown Plan. He noted that the Downtown Plan stipulates a ground floor restriction along the entire Third Street frontage from Monterey to Depot Street. He felt that it was important to have the retail-commercial, restaurant and entertainment continuity along the entire block. He stated that it is hard to determine how much commercial square footage the block would accommodate. He stated that he is not free to speak for the Downtown Association Board regarding the request to reduce the commercial square footage to 8,000 square feet.

Mr. Hechtman said that he does not have a problem building the Third Street bottom floor at the same time as the upper level as it is proposed to be designed as one building. Regarding the 40 dwelling units per acre, he stated that this type of product is not doable in this market. He said that he understood why the Downtown Association would like more residential units in the downtown. However, he felt that this would be too dense for the area. He stated that Glenrock Builders believes the project is buildable and saleable at 25 dwelling units per acre. However, to pack 80 units on the site would result in the units being too small and no one will want them.

No further comments being offered, the public hearing was closed.

Council Member Sellers stated that he considers this property ground zero for the entire downtown. If this property was important 10 years ago, he felt it was more important today. He said that as this property goes so does the City's prospect for attracting the courthouse patrons who will visit the downtown and use what is developed on Third Street. He stated that there are several key properties that are considering development. He said that this property will be looked at for its high standards by subsequent development. He felt that the applicant has met the high bar set by the Council. He said that there were a couple of items that were important to discuss and consider this evening. Regarding the commercial aspect, he stated that he had the opportunity to attend a mixed use development seminar in Monterey where it was stated that the depth of commercial is critical. He felt that the design of the commercial along Third Street will be critical to its success. If the City designs the depth of the commercial such that it is not deep enough or does not have the right quality, it will be a de facto situation. He recommended the Council think about the overall layout of development. He stated that the reluctance on the part of the applicant is attributed to the design and trying to squeeze too much square footage onto the property. He recommended the City try to hold to the 10,000 square foot standard because the depth of 25 feet will be the minimum that needs to be met. He recommended the City consult with retail individuals to determine whether 25 feet is a key number. If it is not, the City needs to figure out a better number. The City also needs to give consideration to the overall design of the property so that it works and encourages retail.

Council Member Sellers addressed the parking requirements. He said that in talking with planners, it was indicated that you can design a downtown project with less than two parking spaces per unit. Reducing the number of parking spaces will address the dilemma of trying to squeeze all the parking into a project. He noted that there is a large segment of public parking adjacent to the western and eastern side of this project. There is also street parking in the area. He noted that the project will have different types of units and different users. He did not believe that this will be the 3.2 residents per unit that you see in the rest of the city that require parking. He recommended that the parking requirements be reduced to 1.75, a standard adopted by other cities with some success. He felt that it needs to be understood that there is significant parking adjacent to this project on all four sides. He stated that commercial uses will allow parking spaces to be interactive. He noted that it was stated that the applicant did not believe that 40 units per acre is doable. He would like to see the number of units per acre go up and the parking requirements go down as a tradeoff. He stated that the Downtown Plan indicates that 35-40 dwelling units in the downtown should be a goal. He recommended the City try to achieve this goal.

Council Member Carr indicated that this project has been discussed by the Community & Economic Development Committee. He felt that the 25-40 dwelling units per acre would be a good range the City could work toward. He stated that he was disappointed to hear that the applicant is talking about the low end of this range. He noted that the Planning Commission minutes indicate that what is being proposed is 1,500 to 1,700 square foot units. This was not the size of units he envisioned for the downtown. He envisioned small units in a dense project, especially on this block. He said that he would like to find ways to increase the density. Maybe Council Member Sellers' suggestion of lowering the parking ratio is a good way to look at this and help find ways to increase the density on the site. He felt that the commercial component has to be the forefront of this project as it is important. He indicated that additional discussion is needed regarding the desired commercial square footage. He stated that he did not want to limit the opportunities for commercial on key streets such as Third Street or other places in the downtown. There needs to be a greater dialogue about this and what the Council envisioned when it approved the goals contained in the Downtown Plan. He agreed that the Downtown Plan does not talk about specific square footage, but talks about commercial all along Third Street. He recommended that the Council think about making sure that the design guidelines talks about the depth of the commercial frontage such that it can be used for commercial and not other uses years down the road. There may be a way the Council can frame this and get away from the square footage that is hard and fast.

Mayor Kennedy noted that this project will need to compete under Measure C. He said that any decisions the Council makes needs to be consistent with the scoring contained within Measure C. He inquired how the Council could reconcile downtown development with Measure C.

Ms. Molloy Previsich said that the action to be taken by the Council would not be inconsistent with Measure C. She noted that the Council would be establishing the land use designation and the zoning standards for the property. Any future submittal for allocation under Measure C would need to be consistent with whatever the Council adopts as part of the General Plan and zoning. She said that based on recent changes to the RDCS, there are several different opportunities for downtown projects to achieve Measure C points.

Mayor Kennedy noted that a recent study indicates that the City is not providing enough parking in the downtown. He expressed concern that the City would cut even further the amount of available parking spaces in the downtown; assuming that residents of the units may use some of the public parking spaces. He said that there may be a time when the demand for two cars per family would be reduced. He did not believe that Morgan Hill has become sufficiently urbanized to be at this point. He stated that he would be concerned should parking spaces per unit be reduced.

Ms. Molloy Previsich said that staff met with architects who are working on another downtown development site who have indicated that they are designing a housing project that will need two parking spaces per unit. She said that the key criteria to competing for Measure C points would be whether the project is consistent with the parking ordinance and the applicable ordinance that would apply should the Council change the parking requirements to 1.75 parking spaces per unit in the PUD. If the standard was two parking spaces per unit, this standard would be applicable. She did not know if there would be any Measure C impacts. The key is whether a project meets the parking requirement.

Council Member Sellers noted that a mid block is being proposed to gain additional Measure C points. He felt that the number of applicants who will be submitting Measure C applications may not be the same project as the other types of units available. He did not believe the downtown would be competing with other projects, but that downtown projects would be competing amongst themselves.

Ms. Molloy Previsich said that staff has been receiving a lot of interest in developing in the downtown. She indicated that the Dahlin Group has been retained by an applicant who is intending to submit for 136-units. There is another developer who may submit for 70-units. This project is proposing to request 50 allotments. She informed the Council that the Dahlin Group designed several downtown and mixed use projects throughout Santa Clara Valley and in other places. The Dahlin Group believes that 25-units per acre is the appropriate density for downtown Morgan Hill at this time. They have stated that it is difficult to achieve higher density within a three-story height limit. Once you go over the 25-units per acre, the next construction style would be for 40 units per acre. They have stated that it is hard to achieve density between 25 and 40 units per acre. Further, the 40 units per acre would be a podium style design, half story below grade/half story above grade parking. She stated that it has been indicated that this is an expensive style to construct; one which allows for higher density at a higher height and a different type of housing product.

Mayor Kennedy noted that the Sunsweet property is a vertical mixed use project and the Dahlin property is all residential. Therefore, it was his belief that there would be different allocations for these two projects.

Ms. Molloy Previsich said that the vertical mixed use category only applies to projects that have 15 residential units or less. She stated that the R-4 projects in the downtown will compete against the Dahlin project.

Mayor Pro Tempore Tate noted that Mr. Hechtman is questioning why the Council was discussing absolute numbers regarding the commercial square footage. He felt that when a design is put into place, Glenrock Builders will know how much linear square footage of commercial can be designed once you

subtract the driveway, parking, entryways to the building, and a mid block entry. He noted that Mr. Hechtman is recommending a percentage of commercial be derived versus an absolute number. He indicated that the Council has not determined the depth. He noted that the Downtown Plan requires and the Council desires, the Third Street frontage to be all commercial. Glenrock Builders also wants the Third Street frontage to be commercial, but does not know how to achieve this. He felt the Council needs to figure out a way to achieve as much commercial as possible.

Council Member Sellers recommended that the Council state that all commercial along the Third Street corridor will be at an acceptable depth such that it encourages retail uses. This will allow designing the project as retail from day one. He acknowledged the Council has to agree to an acceptable depth. This can be accomplished by looking at other successful projects. He recommended that office space requests be reviewed as conditional use permits.

Ms. Molloy Previsich informed the Council that there are 180 units that have been identified for the downtown competition. She said that there may be an opportunity for the Council to adjust this, shifting allocations from other allocations. She indicated that there is a separate category for vertical mixed use for small projects (15 units or fewer). Staff believes that there is interest by individuals who will be submitting for more than 180 allocations. There is also interest for affordable units located in the downtown, but these units will not come out of the downtown area allocation.

Rocke Garcia indicated that projects consisting of 15 units or less can compete for vertical mixed use allocations. Even though his project is a vertical mixed use project, he would not achieve any points for this housing product. He stated that the 25 dwelling units to the acre may achieve 27 units. This would depend on how the architect lays out the project. Once you go above this number, the design will be that of a podium, a concrete structure that runs approximately \$70 per square foot to build.

Mayor Kennedy stated that he would recommend the Council proceed with the staff recommended action, with no modifications.

Council Member Sellers said that in hearing what the Dahlan Group has stated, he felt that there may be an opportunity for platform projects in the future. He would like to figure out a way to achieve the best possible project. He did not support 25% office use unless it is approved under a conditional use permit. He stated that he would like to develop all retail along the Third Street frontage. He felt that there are a lot of resources that can help find appropriate tenants for that property, up to and including letters of intent before concrete is poured to encourage retail. He stated that he would be willing to move forward this evening.

City Manager Tewes referred the Council to page 54 of the agenda packet, page 1 of Exhibit A. He noted that the section contains the language that Council Member Sellers would like changed.

Ms. Molly Previsich said that based on Council discussion, Exhibit A of the ordinance could be amended as follows: delete section G (this section allows 25% of ground floor to be used for office or personal services) and amend letter A to require office and personal uses to be conditional uses. She recommended that the appropriate retail depth be addressed as part of the development guidelines for the

Third Street frontage. She said the Council could keep a minimum ground floor requirement, but make it the 8,000 square feet the project proponents believe is feasible, with additional guidelines that will allow for retail. The design guidelines could include the language Council Member Sellers spoke to. It was staff's belief that the Council would like some deep spaces that can accommodate a bakery, coffee shop or café. She felt that the depth judgment will come in once the City looks at an actual project. She indicated that a floor plan will be submitted that will show varying depths of commercial spaces from the Third Street property line.

Mayor Pro Tempore Tate said that he did not want to approve 8,000 square feet commercial if it is not the right number.

Ms. Molly Previsich noted that the applicant has stated that they can achieve 8,000 square feet. This square footage reflects a 25 foot depth along 300 linear square feet.

Council Member Sellers said that he would agree to staff's recommended motion as a compromise.

Ms. Molloy Previsich indicated that the design guidelines could stipulate that "Development is encouraged to provide more than 8,000 square feet of ground floor frontage along Third Street and that the depth is to be appropriate for retail use."

Action: *On a motion by Council Member Sellers and seconded by Mayor Pro Tempore Tate, the City Council unanimously (5-0) **Adopted** Resolution No. 5937, amending the General Plan.*

Action: *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Waived** the Reading in Full of Ordinance No. 1735, New Series, the Zoning Amendment Ordinance.*

Action: *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council **Introduced** Ordinance No. 1735, New Series, by Title Only, as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING THE ZONING ON SEVEN PARCELS FROM CENTRAL COMMERCIAL RESIDENTIAL CC-R, TO PLANNED UNIT DEVELOPMENT PUD, BRINGING THE PARCELS INTO CONFORMANCE WITH THE DOWNTOWN PLAN AND THE GENERAL PLAN (APNs 726-13-032, 033, 034, 041, 042, 043, 044), amending exhibit A as recommended by staff (office commercial to require a conditional use permit, appropriate depth for retail use, and amending the Minimum Ground Floor heading – to read: "A minimum of 8,000 square feet...", by the following roll call vote: AYES: Carr, Grzan, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.***

City Council Action

OTHER BUSINESS:

10. SOUTH COUNTY AIR QUALITY ISSUES

Director of Public Works Ashcraft presented the staff report, indicating that staff requested that members of the Bay Area Air Quality Management District be present this evening to present a report to the Council that addresses issues that have to do with the quality of south valley air as well as the Metcalf Center.

Dennis James, senior air quality engineer, Bay Area Air Quality Management District, addressed the permitting process for the Metcalf energy center. He stated that the Metcalf energy center went through a rigorous permitting process. He said that there are four items that an applicant has to show in the process: 1) use of the most stringent emission control equipment available; 2) purchase offsets that reduces emission; 3) model the impacts of the facility to show that there are no significant impacts from the facility; and 4) show that the plant would not cause or contribute to the accident of any ambient air quality standard. He said that the Metcalf energy center was shown to have no significant impacts. He stated that the facility is in operation, performed source testing, and is in compliance with all requirements. He said that during the process, the Energy Commission required Calpine to install monitoring stations. It was his understanding that one monitoring station has been installed at a park south of the facility. He stated that the facility has stacks that are 150 feet high and that it is emitting very low concentration of pollutants. By the time the pollutants disperse and mix in with the atmosphere, it is not detectable in Morgan Hill.

Mayor Kennedy indicated that it was his understanding that a monitoring station has been installed to the north and that the one to the south has not yet been installed. He inquired when the monitoring station to the south would be installed and what can be done to speed up the installation. He stated that the emission control requirements were relaxed so that Calpine could start up the plant. Therefore, it is not known what was released into the air during the start up that might have affected Morgan Hill.

Mr. James informed the Council that he does not know the status of the Calpine station. He said that the District is involved with the siting. He said that the District does not have the authority to require a monitoring station unless a facility triggers the need through the modeling process. He stated that if the concentrations are over a certain level, Calpine will need to conduct preconstruction monitoring. He indicated that the modeling results did not show a need to conduct preconstruction monitoring. He said that EPA has several models they reviewed and approved over the years of an air disbursement model and that it is the only tool available to predict emission before something is built.

Eric Stevenson, air monitoring manager, addressed the progress made on the two monitoring stations required by the California Energy Commission. He stated that there are stations nearby that they operate: two in San Martin and one in Gilroy. He said that these stations measure ozone concentrations, but no other compounds. The two monitoring stations required by the California Energy Commission will monitor three classes of compounds: oxides, nitrogen, and carbon monoxide; and particulate matter at 10 microns or less in range. He said that they receive input, collect data and audit these stations on an

annual basis. It is a goal to have the two stations maintain the air quality required. He said that one station will be located at Los Paseos Park, the northern location. The southern monitoring station will be located at Encinal School. He stated that the siting process is a long and arduous one. They need to make sure that the air flow is not disrupted by buildings, trees, or other similar structures. They also need to make sure that there are no sources near by and need to be a certain distance from roadways that might influence measurements. He stated that the City of San Jose is involved and that it is their goal to locate the stations where they can be stationary for up to 50 years. He indicated that they are working with the School District, trying to persuade them not to take particular actions that might have an affect on the site. He informed the Council that the School District would like to plant trees; rendering the school site unacceptable. He stated that he is in the process of making sure that the sites are properly maintained for the long term.

Mayor Kennedy said that it was his understanding that the School District opposed the Encinal School site as a location for the monitoring station.

Mr. Stevenson said that it was his understanding that the School District will allow Calpine to place one of the monitors at Encinal School, away from the School. He informed the Council that the City of San Jose is working toward obtaining the property. A subcontractor to Calpine will install the monitors and that he will have oversight of the site; conducting audits and reviewing data. He said that the installation of a monitoring station is a requirement placed upon Calpine by the California Energy Commission.

Council Member Carr stated that he was encouraged to hear that the Encinal School site will be used as the southern monitoring site as the City was under the impression that this site was ruled out by the City of San Jose because a 50 year horizon in their Coyote Valley Plan.

Council Member Sellers said that the Council wants to make sure particulate matter levels do not exceed what is considered to be acceptable emission levels. He said that this is a difficult issue for Morgan Hill because residents are directly impacted and want to know information. He noted that no residents in the City of San Jose will be impacted and yet, they hold the key. He offered the City's assistance to help with School District negotiations to make sure that the monitoring station is installed.

Mr. Stevenson said that the only item that is holding up the installation of the monitoring station is the School District's desire to plant trees. It is his understanding that this is under negotiations. The School District is considering planting trees in another area, or planting slow growing trees. It is his understanding that the project is moving forward.

Council Member Carr inquired when the Metcalf energy center was permitted.

Mr. Stevenson indicated that the process began 5 years ago and that it took 18-24 months to build, noting that it came under operation 2-3 months ago. He said that the Calpine station is currently using the highest and best technology available today. He said that the California Energy Commission can require that the location of the offset be specific to the facility. He indicated that he would provide the City of Morgan Hill with the location of the offsets.

Mayor Kennedy requested that the City be notified if assistance is needed to get the monitoring station installed as the City wants it in place for the protection of residents.

Action: *The Council **Received** the Report.*

11. MORGAN HILL LIBRARY APPROVAL OF DESIGN DEVELOPMENT

Project Manager Dumas presented the staff report, indicating that in May 2005, the Council approved the schematic design concept for the new Morgan Hill library. He informed the Council that the City's architect, Chris Noll, was in attendance to present the second phase of the design process as well as the design development document. He indicated that two presentations have been made to the Architectural Review Board (ARB) and the Library, Culture & Arts Commission. He said the project received a preliminary review from the ARB on July 7; indicating that the Board's comments were favorable. A presentation was made to the Library, Culture & Arts Commission on Monday night. He said that the Commission focused on security concerns associated with the book drop off area and suggested that the trees be trimmed for visibility. Regarding the design, two Commissioners commented that they like the rendering with the light color alternate stone as it was more compatible with the residential surroundings and the civic center building. The Commissioners do not believe that the library should be compromised to fit the style of other buildings in the civic center. They felt that the existing buildings will need to be reworked in the future. He informed the Council that the Commission questioned whether any compromises were being made to keep the building within budget. He stated that it was staff's understanding that the Commissioners felt that some elements of the project could be improved upon with additional resources (e.g. funding for public art in the civic center plaza). Included in the budget is the construction costs for some historical art columns and some sister cities public information benches to be located in the plaza. However, the design, the manufacturing, and the installation of the informative tile art on the columns and benches are not included in the budget. He stated that it is staff's intent to return to the Commission in September 2005 to present the design concept and recommendations to fund public art. Regarding the overall project budget, he indicated that TBI Construction and Construction Management has prepared an overall cost model for this phase of the design. He said that TBI has projected that the project remains within budget and on schedule through this phase of design. Should Council approve the design development documents and authorizes staff to proceed with the construction documents, it is anticipated that the City would be ready to start the bid process in late December with a bid opening scheduled for late January 2006, construction to commence in March 2006, and the library building to be completed on May 1, 2007.

Council Member Sellers noted that staff indicated the preference of some Library, Culture & Arts Commissioners on some of the elements. He inquired whether Mr. Dumas had any thoughts, as an architect, on some of the design elements. Does he see design elements preferable over others?

Mr. Dumas said that there were other items discussed by the Commission. One area discussed was enhancing the landscaping around the project; noting that landscaping is sparse to the west of the project, in the expansion area of the building. Not knowing when the expansion is to take place, he said that this area will look sparse and could use enhancing. He felt that the exterior hardscape could be enhanced by adding more color or installing pavers instead of concrete or other materials, noting that

this would take additional funds. He said that a project could always use additional funding for interior finishes to upgrade the interior look. He noted that interior art work and interior plantings are not included in the budget. He informed the Council that the Commission suggests utilization of additional funds to enhance fixtures, furniture and equipment. He stated that the City has established an overall budget based on similar libraries. However, the City has not started an itemized list of each fixture nor evaluated whether it is an adequate budget.

Council Member Grzan said that should there be an additional \$800,000 that can be used for the library, would this amount be a significant amount to expand the square footage of the facility?

Mr. Dumas said that the City could expand the square footage. He stated that it was his understanding that the office area is designed for future expansion. It may be found that the 28,000 square foot library may be adequate to meet the needs of the library for some time. He said that he would like to see additional dollars used to enhance the inside of the building.

Chris Noll, Noll & Tam Architects, presented a brief overview of the library project. He stated that the project is on schedule. He has spent the last three months developing the design further, taking into consideration the comments made by the Council at the last meeting. He identified how the site plan addressed the concerns raised by the Council: 1) Proximity of the parking lot to the front entrance, specifically, the location of the disabled parking. He stated that the building has been moved closer to the parking lot; bringing the parking closer to the front door. 2) Location of the book drop along the side of the building was not easily seen. The book drop has been brought out to the face of the building. The book drop is now clearly visible from the drop off area. 3) View of El Toro was deemed to be a priority. He said that bay windows have been designed to face directly toward El Toro and that spaces interior to the building are oriented similarly. 4) The building to be designed as energy efficient as possible. He indicated that the building has been moved forward in order to have the most energy efficient system. 5) Safety of staff and patrons. He stated that the design team has reviewed the trees and landscaping on site. The design team is looking at sight lines in certain areas in order to provide good visibility. 6) Creation of a warm and welcoming design and incorporation of a fire place. He said that these items will be addressed as the design of the library moves forward. He indicated that the ARB reviewed the design of the library on July 7, 2005. He stated that the ARB was generally favorable about the design as was the Library, Culture & Arts Commission. He walked the Council through the site layout of the library building and its relationship to the Civic Center plaza.

Meredith Marchack addressed the feel of the library and the theme for the library. She addressed the floor plan, design elements and interior design of the library building. She stated that the windows have been reoriented toward El Toro in order to have a better view of the mountain. She felt that the design of the library has come a long way as it relates to the interior of the building.

Mr. Noll addressed the exterior building materials as they relate to the existing buildings in the civic center; particularly the stucco walls and the red tile roofing material. He said that a deliberate decision was made a long time ago not to use tile roof material. He said that the design team has been working along the lines of designing a modern and crisp building that would fit comfortable on the site. He indicated that the design team gave thought to bringing in the same color used on the civic center

building wall. He said that dark red sandstone would be used as it would be complimentary to the color of the red tile of the existing buildings. He noted that a natural stone color is also being considered. The design team tried to incorporate crisp lines throughout the building. He addressed other design elements and finishes to be used on the building.

Mayor Kennedy inquired where additional funds could be best spent if they were made available.

Mr. Noll said that the design team is satisfied with the size of the library and would not choose to put additional funds to increasing its size. If additional funds were to be made available, he recommended that they be used to enhance the interior finishes, installation of additional landscaping, additional seating, art work in the plaza area, and provide for a larger contingency.

Council Member Grzan understood the desire to incorporate a lush landscaping area and inquired whether it would be in conflict with drought tolerant native landscaping the City would like to include.

Mr. Noll responded that incorporation of additional shading would help preserve water and vegetation. He clarified that all plants are to be native or drought tolerant.

Council Member Carr expressed concern that the book drop appears to be far from the front entrance. He felt that it may be awkward or difficult to find as it is located around the corner of the building.

Mr. Noll indicated that the design team has spent a considerable amount of time talking about the location of the book drop, looking at a number of alternatives. It was decided that the location, as presented, was the best overall solution as the book drop has to be convenient and functional for the library staff. He noted that the book drop off area will be visible from the parking lot. He said that lighting will provide a safe feel.

Mayor Kennedy opened the floor to public comment.

Carol O'Hare, president of the Friends of the Library, commended the library design committee, architects, library staff and City staff who have worked hard to bring forth this attractive, well designed and interesting library building; staying within the \$17 million budget. She understood that this was a tight budget and that tradeoffs were incorporated. However, it looks like there may be additional redevelopment agency funds available. She said that it is felt that these extra funds can be used to improve the library building. She stated her support of incorporating public art as part of the library design and felt that this would be a great opportunity to use some redevelopment agency funds to bring art into the library and civic center plaza. She said that it was important for citizens to have a facility that it can enjoy and show off to family and friends. She requested that the City Council take time to decide how to use available funding and do what it can to make this building even better.

Mayor Kennedy indicated that many cities have a public arts ordinance that sets aside approximately 2% of its budget for public art. He inquired whether it would be better to use redevelopment agency funds toward public art or to use funds for interior finishes or landscaping.

Ms. O'Hare said that this is a difficult question to respond to as she sees this as a package. She stated that she would like to see public art installed throughout the City. She felt the City needs to make the library building the best it can be. It was her hope that there would be funding for public art; whether it be partially city funding, grants, or by fundraising efforts by various groups. She would like to see the outside be as beautiful as the inside design.

George Nale stated that as a former library commissioner and very involved citizen, he is aware of all the twists, turns and agony that went into finding a library the City could afford, including its location. If there are additional funds available, it was his hope that the Council would withhold allocation of these funds until the library and any other competing interests have a chance to detail expenses on what is desired. The Council/Redevelopment Agency could then allocate funds based on those needs.

No further comments were offered.

Mayor Pro Tempore Tate stated his support of the design. He inquired whether all the functions the library staff had in their preliminary design were incorporated and were adequate.

Sarah Flowers stated that with the passage of Measure A and failure of Measure B, library funding has not been expanded. Therefore, library staffing and collections would not be greatly expanded. Based on existing funding and staffing levels, it was her belief that the 28,000 square foot library would be large enough for staff to operate the next few years. She was pleased to know that there is a possibility for future expansion. She stated that she would like to see any additional funds used on upgrading finishes, additional landscaping, or the installation of public art; not expanding the size of the facility.

Council Member Sellers inquired as to the ratio used to determine the size of the facility for the community.

Ms. Flowers said that a funding scenario resulted in a ½ square foot per capacity. Based on this, she felt the library is well within this percentage and would meet the needs of the community a few years into the future. She said that all cities are at this level except for the City of Gilroy and Milpitas. She said that Milpitas has a larger library in design development. Once Morgan Hill and Milpitas complete construction of new libraries, it will only be Gilroy that does not meet this level.

Mayor Kennedy said that he likes the use of the brighter red color. He stated his support of keeping the remaining redevelopment agency funds as a set aside, not earmarking these funds for any particular project at this time. He favors allocating some funds for public art and improving the interior finishes. He said that the City may need to wait and have all city projects come forward with their requests for allocation of funds (e.g., outdoor sports complex, indoor recreation center). He said that the Council does not know how the construction market will be and that it may be premature to earmark specific funds. He recommended the Council ask the various projects to submit funding requests for review. He thanked staff, the architects, Library Commissioners, Library staff and Mayor Pro Tempore Tate for the many hours of work in bringing the library project to this stage.

Mayor Pro Tempore Tate indicated that he did not support the use of the brighter red color, but supports moving full speed ahead.

Council Member Carr did not like use of the bright red color. He stated his support of moving the project along. He noted that the City does not have extra funding in the redevelopment agency. He said that the City has a project that may not move forward. He said that the Council/Redevelopment Agency has an approved process where it would look at all remaining dollars. He noted that all redevelopment agency funds have been allocated, but that the Redevelopment Agency can take a look at the funds and look at proceeding with enhancements. He did not want to send a message encouraging individuals to come forward and request additional funds. He said that the Council/Redevelopment Agency needs to follow through with what it said it would do with these dollars. He expressed concern about the location of the book drop off. Without being able to turn the building, the City will need to work on the design to make sure that the sight line and signage are appropriate so that individuals will know where to drop off library books. He supported how the views of El Toro were addressed.

Council Member Sellers thanked library staff, library supporters, Library Commissioners, and staff for the many hours spent on the library project. He felt that these efforts resulted in an outstanding design. He indicated that the Council has adopted 3 policies and that they were important to keep in mind as the City moves forward: 1) the City will not spend public money on public art. He stated that he worked hard to create the Morgan Hill Community Foundation in order to provide resources in the community to create art. He said that art has been an important part of his family and his life. He would like to do what he can to help public art. However, public expenditures were deemed by this Council to be inappropriately spent on public art. He felt the community would receive better and/or interesting art if not paid at public expense. 2) The Redevelopment Agency outlined redevelopment agency funds for specific projects; noting that these funds are dwindling. He noted that every project approved by the City was for the purpose of increasing economic development and increasing a return to the community. 3) The Council decided to refer all remaining expenditures to one of the Council subcommittees. He said that there are far more uses, requests, and desire to spend funds than there are funds. He stated that prior to holding the election on Measures A & B, he suggested the City consider passing its own library measure. He noted that the City is undertaking a community conversation where members of the community will be asked what they think. He felt that this measure should be included as part of the community conversation. Further, the City needs to identify public resources for the ongoing hours of operation for the library. He felt the library would be a useless facility if it cannot be opened a number of hours. If the community desires a library, the City needs to find a dedicated source of funds that would assure that the library will remain opened additional hours. He stated his support of the use of the red color but that he was not willing to put forth his desires ahead of the professionals and subcommittee group who have indicated another direction.

City Manager Tewes informed the Council that staff is not asking the Council to select a color at this time. Staff is requesting that the Council adopt the design development phase and authorize staff to proceed.

Action: *On a motion by Council Member Grzan and seconded by Council Member Sellers, the City Council unanimously (5-0) **Approved** Design Development Drawings for the Library.*

Action: *On a motion by Council Member Grzan and seconded by Council Member Sellers, the City Council unanimously (5-0) **Authorized** Staff to Proceed with the Construction Document Phase of the Design Process.*

12. SWIM TEAM LANE ASSIGNMENT POLICY FOR THE 50 METER POOL AT THE MORGAN HILL AQUATICS CENTER

Acting Recreation and Community Services Manager Dile presented the staff report, indicating that based on Council direction of February 2005, the Parks & Recreation worked with two competitive swim teams and recommend an ongoing policy on allocation of swim lanes for the competition pool. She informed the Council that the Parks & Recreation Commission has forward a recommendation based on the Commission's understanding that Silicon Valley Aquatics Association (e.g., El Toro Aquatics) is intending to use the Sobrato High School pool for practice. She stated that the Parks & Recreation Commission's recommendation allows El Toro Aquatics to use the competition pool at the aquatics center on certain designated timeframes, in conjunction with use by the Mako Group and city programming. The Commission further recommends that staff look at the development of a municipal swim team; requesting that staff report back to them later in the year in order to explore this concept. She informed the Council that staff has used this recommendation in developing the proposed operating plan.

Mayor Kennedy opened the floor to public comment. No comments were offered.

Council Member Carr indicated that he was in attendance at the Parks & Recreation Commission meeting when they discussed a proposed recommendation. He noted that the Parks & Recreation Commission is recommending that "The El Toro Aquatics shall swim at Sobrato High School." He felt that it needs to be made clear that City staff and the Council will work with the School District to help get to a use agreement that would allow the swim team to swim at Sobrato High School. He noted that the City has no control over the use of the pool. He recommended that the language be softened.

Action: *On a motion by Council Member Carr and seconded by Council Member Sellers, the City Council unanimously (5-0) **Accepted** the Parks and Recreation Commission's Recommendation for Lane Allocation at the Aquatics Center, amending the third recommendation that states "...Silicon Valley Aquatics Association (El Toro Aquatics) shall swim at Sobrato High School..." to state "... the City will assist in working toward a use agreement that would allow the use of the Sobrato High School pool."*

13. 2005-2006 OPERATING PLAN FOR THE MORGAN HILL AQUATICS CENTER

Acting Recreation and Community Services Manager Dile acknowledged staff members Dick Busse, Margarita Balagso, Jack Dilles, Tina Reza and Julie Spier for their assistance in addressing the issues

related to the recommended operating plan for the aquatics center for the remainder of the fiscal year. She addressed the history of the cost recovery expectations, projected financial status for fiscal year 2004-05 (74% projected cost recovery rate), the proposed operating plan for fiscal year 2005-06 (approximate 91% cost recovery rate), the management system put into place to enhance financial performance, recommendations, and the implementation plan. She informed the Council that staff recommends approval of the 2005-06 operating plan for the aquatics center as staff believes that it is achievable and necessary to meet cost recovery of 90% or better.

Council Member Grzan noted that staff has indicated that it is committed to return to the Council with an operating plan that would meet a 90% cost recovery rate. He noted that staff is requesting that the Council approve the plan this evening.

Ms. Dile indicated that at the May 2005 budget workshop, staff indicated that it would return in mid summer with an operating plan for the off season. She informed the Council that staff has established the financial system to better track the operating status of the aquatics center this summer. She stated that staff will be able to build and use the financial software system over the course of the year so that staff will know all costs and revenues associated with swim lessons. She indicated that staff does not anticipate that cost recovery would be worse than 74% for fiscal year 2004-05, noting that staff has not concluded its financials. Staff believes that the only adjustments remaining would be payroll adjustments. She said that the user numbers in June and July 2004 were higher (46,637) compared to June and July 2005 (39,896). However, revenue for 2005 is better. Last year, the daily revenue was \$375,630 and that this year, for the same time period, the daily revenue is \$401,286. This does not include deferred revenue.

City Manager Tewes clarified that on June 30, 2005, the Fiscal Year 2004-05 ended. He said that the City still has transactions occurring to close the books; both on the revenue and expenditure side.

Council Member Sellers stated that as season passes go up and day use goes down, it may smooth out the number of individuals who use the facility on a daily basis. He said that weather is key to facility use; noting that the hotter it gets, the more individuals use the facility. He also noted that unseasonable rain occurred during the month of June, reducing daily attendance numbers. He recommended that all factors be considered in the revenue analysis. He felt that three factors came into play for not meeting revenue projections: 1) a loss of \$600,000 in revenue attributed to things that were not anticipated; 2) management failures (things that should have been caught were not); and 3) higher costs than anticipated (e.g., workers compensation, high energy costs, etc.). He indicated that he visited the aquatics center and noticed that there was an area at the southern edge of the recreation pool that had a large puddle. He inquired whether there was a budget to rectify items that were not included in the building replacement fund, or the day to day operations fund.

In response to Council Member Sellers' question, Ms. Dile stated that she did not believe that the aquatics center has a contingency fund that could be used to correct certain problems (e.g., tear up concrete and fix plumbing system) as these repairs do not fall within the building replacement or day to day operations funds.

Mayor Kennedy said that the problem that Council Member Sellers was referring to appears to be one of the duct drains is plugged up and the ducts are not draining properly. He indicated that there is also an issue of maintenance for the overall facilities (e.g., taking care of cracks in the concrete and the walls). He felt the City needs to make sure that the facilities are maintained and repaired properly.

Mayor Kennedy opened the floor to public comment.

Martine Kapetanich pointed out that the use of the aquatics center is not seasonal, but that it is used year round. She informed the Council that master swimmers have been asked by City staff to join the U.S. Masters Registration Program at a fee of \$30 per year. This fee would pay for the cost of insurance to cover master swimmers for the year. She said that masters swimmers pay the City \$45 per month for the use of the facility. She encouraged individuals to join the Masters Program and pay on a monthly basis. Should the aquatics center close down, she felt that it would be a disservice to this group. She informed the Council that individuals are using the aquatics facility year round. She acknowledged that the aquatics center is not 100% cost recovery, and noted that there are other facilities in the City that are not at 100% cost recovery. She stated that she would like the aquatics facility to continue to operate through winter months.

Tim Thornton indicated that he was contacted by local tri athletes to provide private instructions to help with the swim leg of their triathlons. It is his hope that this is a program that can be added to the aquatics center as it could generate a few thousand dollars a year and would ducktail under the existing program and may evolve into special clinics and instructions for other adults who are not tri athletes. He stated that this is a wonderful facility and commended all involved who made the aquatics complex a reality. He felt that the aquatics center would be improving financially as the years go along.

Geno Acevedo indicated that he is a masters swimmer, a masters water polo player, and president of the Morgan Hill Aquatics Foundation. He informed the Council that the Foundation Board has not had the opportunity to review the operating plan, given the short period of time to review the report. He indicated that he has reviewed the operating plan in detail; having both good and bad critique. He said the report is mostly good and agreed with a lot of the items contained in the report. He supports the suggestion that the City attempt to run the facility like a business; including the evaluations. He stated that he would endorse the report, overall. He noted that it is being suggested that the facility only operate in the off season Monday thru Friday. He stated that master water polo activities take place on Saturdays. Monday through Friday operations would preclude El Toro Brew Masters Water Polo team from using the facility on Saturdays. While the center is not proposed to be opened in September and October for recreation swimming, he suggested the City have in place a “quick open” plan when the temperature reaches a certain trigger (hot days). He stated that he took issue with attachment A, section D, second paragraph that talks about anticipated money from the Foundation. He indicated that the Morgan Hill Aquatics Foundation was set up to assist the City and that the City began the process to help the Foundation establish itself. However, he felt that in recent times, the City has not communicated well with the Foundation. He said that City staff has not set up or asked to meet with the Foundation Board. He felt the expectation of \$10,400 in grants from the Foundation to the City is a unilateral expectation; without any coordination or discussions with the Foundation Board. He noted that grants are expected two years in a row. If it is the expectation that the Foundation contribute financially

to the aquatics center, he recommended that staff and/or the Council have discussions with the Foundation. He referred to a statement in the document that states that staff was notified by the Foundation of its intent to support capital projects. He indicated that this is a false statement. He said that he had a conversation with Ms. Dile where he indicated the Foundation could consider assisting with maintenance and operation costs and under what circumstances this could occur.

Susan Mister stated that as a fitness instructor since the aquatics center's opening, she has seen an increase in members using the instructional pool. She said that there was a consistent retention of members in the first season into the fall/winter season. She indicated that the use of the instructional pool has increased tremendously. She anticipates an increase into the fall/winter season. She requested the aquatics center be opened year round to allow use.

No further comments were offered.

Council Member Grzan requested clarification on what staff meant about entering into a memorandum of understanding with the swim teams.

Ms. Dile said that staff believes the City needs to have documentation on mutual responsibilities relating to swim meets. She said that it was her impression that there were informal arrangements made last year in terms of the division of financial responsibilities and staffing resources. She said that staff is not anticipating a greater burden to be placed upon the swim clubs in hosting meets in the future. She felt that clarity would be helpful to staff and the swim club.

Council Member Grzan indicated that the Council received information that the losses were approximately \$274,000 and that at this point, the losses are at \$358,000. He said that at the Financial Policy subcommittee meeting, there was a projection of an operating loss of \$1.6 million for the last year. He inquired whether this new number changes the operating loss amount.

City Manager Tewes said that the new number is reflected in the overall estimates from the general fund. He stated that when the Council adopted the Fiscal Year 2005-06 budget, staff made an estimate on the operating results for the year ending June 30. For the general fund, it is estimated that the operating loss would be \$1.4 million. Based on the most recent information and other information that includes revenue performance and other issues, it is now estimated at approximately \$1.6 million.

Council Member Sellers felt that a lot of the problems experienced were growing pains. In hearing the presentation and details, he felt that safeguards are now in place. He felt comfortable proceeding in light of having the experience of going through a season and half. He said that the Council's next budget decision will include discussion of increasing fees to achieve 100% cost recovery or lowering the fees to accommodate more individuals to utilize the facility.

Council Member Carr indicated that the Public Safety & Community Services subcommittee discussed the operating plan briefly. He said that the subcommittee would continue its discussion on the operating plan and work toward a break even point in year three. He thanked staff for putting the information together and helping the Council understand what took place; including lessons to be learned in order to

move forward. He noted that the City is trying to provide opportunities for everyone, including those who can least afford to be a part of the community. He felt that this was the bottom line of what the redevelopment agency is all about and continues to be all about; providing access and growth of ability for individuals to be a part of the community. He stated that he is looking forward toward working on the expansion of scholarship opportunities.

Mayor Pro Tempore Tate felt the City has a commitment to find a way to break even in the third year. He stated that the Community Services subcommittee will be working toward finding ways to make this happen.

Council Member Grzan stated that the losses that occurred this year were not unexpected. He said that he did not know of any local municipal recreation program that achieves 100% cost recovery. He did not believe that going back to the community and asking them to pay a higher rate to achieve 100% cost recover is a reality. He expressed concern that the new indoor recreation center with an aquatic feature, would also not achieve 100% cost recovery. He recommended the City work on other economic opportunities to balance the general fund and support these programs at a fee and a rate that makes it affordable to the majority of Morgan Hill residents. He said the City could run the aquatics center like a business; marketing the center to attract individuals from San Jose, Watsonville, and other areas. He did not believe that it was the City's goal to make the center 100% cost recovery, but that the City find other revenue sources to support these programs in order to operate the facility year round at rates that everyone can afford. He felt that it was the Council's focus to go back and figure out how to raise enough revenues to help these programs continue. He felt that a year from now, the City would be looking at approximately 85% cost recovery and approximately 80% for the indoor recreation center.

Mayor Kennedy stated that he has raised the issue of recreational swim hours and the use of the 50 meter pool on the weekends. He noted that the instructional pool is over loaded and that the 50 meter pool closes at 4:00 p.m. He indicated that he has seen an average of 65-80 swimmers on any given day. These individuals are then transferred to the small instructional pool that is already over loaded. He felt the City was creating a negative impression by shifting programs and closing pools. He did not believe the cost would be too great to extend the open hours for the recreational pool to 5:00 p.m. on the weekends. He requested the Council subcommittee take a look at extending the hours of operation in more detail. He felt the City should implement a suggestion program for visitors and that follow up action take place. He supported taking a look at the suggestion about Saturday water polo and a "quick response plan" to open the facility if there is a forecast for a hot weekend in order to seize an opportunity. He felt that the aquatics center has been a success; acknowledging that mistakes have been made and that they will be corrected.

Action: *On a motion by Council Member Sellers and seconded by Mayor Pro Tempore Tate, the City Council unanimously (5-0) **Accepted** the proposed Operating Plan and related recommendations.*

Action: *On a motion by Council Member Sellers and seconded by Mayor Pro Tempore Tate, the City Council unanimously (5-0) **Directed** Staff to Report Monthly on the Aquatic Center's Financial Status Throughout 2005-2006, and Identify Corrective Action if Needed.*

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council unanimously (5-0) **Extended** the meeting curfew to 11:40 p.m.*

14. APPROVAL OF COMMUNITY PARK MASTER PLAN AND MITIGATED NEGATIVE DECLARATION

Deputy Director of Public Works Struve presented the staff report on the community park master plan. He indicated that the Parks & Recreation Commission recommends that the Council approve the Community Park master plan. He addressed the four phases of construction. Phase I would include the construction of 4 new tennis courts for a total of 8 tennis courts, rehabilitation of the existing tennis courts, a new restroom facility to be centrally located, renovate the existing and construct new group reservation areas, lighting of basketball courts and adjustments to the pedestrian trails around the park. He indicated that the maintenance cost impacts for phase I improvements are minimal. He said that staff is looking for cooperation of the tennis group to perform extensive maintenance of the tennis courts. He said that the concept design for phases 2-4 are completed, keeping in mind minimizing operational cost impacts. He indicated that a detailed evaluation would be completed at a later date for phases 2-4; noting that these phases have not been funded or included in the current capital improvement programs' budget. He addressed the two dog parks, indicating that one dog area is proposed on the southeast corner of the park, within the fringe area with no funding proposed for improvements. He said that this area has been offered to the dog owners' group who are interested in seeing this location as an interim dog park. He informed the Council that this group has raised money to start some improvements such as fencing and maintenance of turf area. He said that irrigation modifications would need to take place. He said that although there is no funding for this project, he has offered this group staff, to some extent, to help them along. He indicated that the second location would be for the permanent dog park. The second area would be located at the Morgan Hill Unified School District bus yard. He said that this area could be used as a dog park, BMX park and/or future corporation yard. He stated that CEQA review was conducted for all four phases, even though phase I is the only phase the City is proposing to move forward with at this time. He informed the Council that Lee Steinmetz, designer of the Community Park master plan, was in attendance to answer any questions the Council may have.

Mayor Kennedy opened the floor to public comment. No comments were offered.

Council Member Sellers thanked everyone involved, especially the dog park group. He was pleased that the City was able to find a dog park facility and that this group would be able to maintain the facility. He thanked staff and Mr. Steinmetz for their work. He felt that these improvements would be significant for the community.

Action: *On a motion by Council Member Sellers and seconded by Mayor Pro Tempore Tate, the City Council unanimously (5-0) **Approved** the Mitigated Negative Declaration.*

Action: *On a motion by Council Member Sellers and seconded by Mayor Pro Tempore Tate, the City Council unanimously (5-0) **Approved** the Mitigation Monitoring and Reporting Program.*

Action: *Council Member Sellers made a motion, seconded by Mayor Pro Tempore Tate, to Approve the Community Park Master Plan.*

Council Member Grzan alerted the Council to an area on the park master plan that may need to be considered with future development. He referred to the area along Little Llagas Creek. He said that there is a potential to incorporate this area as a linear park and recommended that it be included in the Community Park master plan as phase 5. He said that it has been included on the list as an area to install a nature trail along the creek. Artists in the community believe that a wildlife sculpture trail can be designed. He felt that there was a wonderful opportunity to develop and include this area in the future development of Community Park.

Council Member Sellers said that it was his understanding, in looking at phase 4, that a trail corridor has been included. He stated that there is an expectation that a trail corridor would be part of the indoor recreation center development.

Mr. Steinmetz noted that there is an area designated for a wildlife trail as part of the indoor recreation center. He indicated that the City was awarded grant funding for the trail corridor.

Council Member Carr stated his appreciation of the work done by staff, the Parks & Recreation Commission and others. He was pleased that the renovation and additional tennis courts would be included as part of phase 1 as it will allow tennis groups to host tennis tournaments. He was also pleased that the restroom facility would be improved as part of phase I.

Vote: *The motion carried unanimously (5-0).*

15. AGREEMENT TO PARTICIPATE AS NON-VOTING LOCAL PARTNER TO PREPARE SANTA CLARA VALLEY HABITAT CONSERVATION PLAN/NATURAL COMMUNITY CONSERVATION PLAN (HCP/NCCP)

Director of Community Development Molloy Previsich presented the staff report, indicating that the Habitat Conservation Plan and the Natural Community Conservation Plan is an inter jurisdictional planning effort. She said that the City has the opportunity to join the current members consisting of VTA, Santa Clara Valley Water District, City of San Jose and Santa Clara County; working with the U.S. Fish and Wildlife and California State Fish and Game Department. She said that this group is preparing a Habitat Conservation Plan and a Natural Community Conservation Plan that will address potential impacts on species and habitats of future development in South County. This plan will have a regional, consolidated approach to mitigations that creates and preserves other conditions that would protect species and habitats versus the case by case approach. She indicated that the cost to Morgan Hill would be \$111,000 in the first year, \$50,000 the second year, and \$100,000 the third year should the City of Gilroy not participate. She informed the Council that these costs would be reduced should the City of Gilroy decide to participate. She stated that there are grants available and that if attained, would adjust future costs. The offer to join the effort is at half cost as a non voting member. She said that the process is based on consensus and that it is the expectation that voting will be rare. She stated that the

end product would still need to be adopted locally before implementation. She stated that Community Development and Public Works staff are recommending that the City of Morgan Hill participate in this jurisdictional effort. She indicated that funding has been identified from impact fees, general plan update fees, and community development funds. She noted that the County's project manager for this effort is Ken Schreiber. In the future, staff would return to the Council seeking permission to enter into the planning agreement. At that time, staff would recommend a member of the Council be identified to serve on the governor body.

Mayor Kennedy indicated that the Transportation & Regional Planning subcommittee reviewed this item and recommends approval, somewhat reluctantly. He stated that this is a situation such that the City has been invited to participate, but is not given the vote. The subcommittee reluctantly supports being a part of this effort as it will benefit the City in the long run.

Mayor Kennedy opened the floor to public comment. No comments were offered.

Action: *On a motion by Council Member Grzan and seconded by Council Member Sellers, the City Council unanimously (5-0) **Authorized** the City Manager to Execute the Non-Voting Local Partner Agreement.*

Action: *On a motion by Council Member Grzan and seconded by Council Member Sellers, the City Council unanimously (5-0) **Amended** the Fiscal Year 2005-2006 Budget to Include \$111,000 in the General Plan Update Contract Services Account for the HCP/NCCP from the Following Sources: \$31,000 General Plan Update Fund (facilitates Open Space & Conservation Elements of GP); \$20,000 Community Development Fund (facilitates environmental reviews of projects); \$10,000 Water Impact Fund (facilitates permitting for water projects); \$10,000 Sewer Impact Fund (facilitates permitting for sewer projects); \$10,000 Parks Impact Fund (facilitates permitting for parks projects); \$10,000 Storm Drainage Impact Fund (facilitates permitting for storm drainage projects); and \$20,000 Traffic Impact Fund (facilitates permitting for roadway projects)*

Action: *On a motion by Council Member Grzan and seconded by Council Member Sellers, the City Council unanimously (5-0) **Authorized** Transmittal of the First Year's \$111,000 to the County of Santa Clara.*

16. COMMITMENT TO ANNEX UNINCORPORATED ISLANDS LOCATED WITHIN THE URBAN SERVICE AREA

Director of Community Development Molloy Previsich informed the Council that LAFCo is urging cities to move forward with incorporation of unincorporated pocket areas; noting that LAFCo has identified 17 pocket areas located within the city limits. She stated that using the island annexation procedure will save the land owners and the City funds as Santa Clara County and LAFCo will be waiving certain costs. However, the agreement to be sent to LAFCo notes that if annexations are not completed, the City would be billed for the time associated with an annexation that did not get completed.

Mayor Kennedy opened the floor to public comment. No comments were offered.

Council Member Sellers indicated that the Transportation & Regional Planning subcommittee has reviewed this item and support staff's recommended action as the benefits would be long term and significant.

Action: *On a motion by Council Member Sellers and seconded by Council Member Grzan, the City Council unanimously (5-0) **Directed** Staff to Prepare Initiation of Island Annexations Under the Provision of Government Code Section 56375.3, for those Identified on the Chart provided in the staff report.*

Action: *On a motion by Council Member Sellers and seconded by Council Member Grzan, the City Council unanimously (5-0) **Requested** that the County Provide the Necessary Mapping, Legal Descriptions, and Surveyor's Reports for the Islands Identified in the Chart provided in the staff report.*

FUTURE COUNCIL-INITIATED AGENDA ITEMS

Mayor Kennedy indicated that the Cochrane Plaza Shopping Center owners have requested a change in the initiative that governs whether a grocery store can be located at the shopping center site. He noted that it would take a vote of the citizens to change this condition. He recommended that the Community & Economic Development Committee consider the request of the shopping center owners.

Council Member Sellers stated that the Community & Economic Development Committee will be meeting next week and that although they have a full agenda, they would review the request.

Mayor Pro Tempore Tate recommended that as part of the ½ day Council retreat requested by Council Member Grzan to conduct a mid-year review of Council goals, the Council reviews its subcommittee structure to discuss what is/is not working well in the ½ day study session.

Mayor Kennedy requested that staff investigate whether there are any League of California Cities opportunities that the Council can attend.

Mayor Kennedy recommended that continued closed session item(s) be deferred to another meeting.

ADJOURNMENT

There being no further business, Mayor/Chairman Kennedy adjourned the meeting at 11:25 p.m.

MINUTES RECORDED AND PREPARED BY:

IRMA TORREZ, CITY CLERK/AGENCY SECRETARY